

**135C.33 Employees — child or dependent adult abuse information and criminal record checks — evaluations — application to other providers — penalty.**

1. Prior to employment of a person in a facility, the facility shall request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the person in this state. A facility shall inform all persons prior to employment regarding the performance of the record checks and shall obtain, from the persons, a signed acknowledgment of the receipt of the information. A facility shall include the following inquiry in an application for employment:

“Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?”

2. *a.* If it is determined that a person being considered for employment in a facility has been convicted of a crime under a law of any state, the department of public safety shall notify the licensee that upon the request of the licensee the department of human services will perform an evaluation to determine whether the crime warrants prohibition of the person’s employment in the facility.

*b.* If a department of human services child or dependent adult abuse record check shows that such person has a record of founded child or dependent adult abuse, the department of human services shall notify the licensee that upon the request of the licensee the department of human services will perform an evaluation to determine whether the founded child or dependent adult abuse warrants prohibition of employment in the facility.

*c.* An evaluation performed under [this subsection](#) shall be performed in accordance with procedures adopted for this purpose by the department of human services.

*d.* (1) If a person owns or operates more than one facility, and an employee of one of such facilities is transferred to another such facility without a lapse in employment, the facility is not required to request additional criminal and child and dependent adult abuse record checks of that employee.

(2) If the ownership of a facility is transferred, at the time of transfer the record checks required by [this section](#) shall be performed for each employee for whom there is no documentation that such record checks have been performed. The facility may continue to employ such employee pending the performance of the record checks and any related evaluation.

3. In an evaluation, the department of human services shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child or dependent adult abuse, the circumstances under which the crime or founded child or dependent adult abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child or dependent adult abuse again, and the number of crimes or founded child or dependent adult abuses committed by the person involved. If the department of human services performs an evaluation for the purposes of [this section](#), the department of human services has final authority in determining whether prohibition of the person’s employment is warranted.

4. *a.* Except as provided in paragraph “*b*” and [subsection 2](#), a person who has committed a crime or has a record of founded child or dependent adult abuse shall not be employed in a facility licensed under [this chapter](#) unless an evaluation has been performed by the department of human services.

*b.* A person with a criminal or abuse record who is employed by a facility licensed under [this chapter](#) and is hired by another licensee without a lapse in employment shall be subject to the criminal history and abuse record checks required pursuant to [subsection 1](#). If an evaluation was previously performed by the department of human services concerning the person’s criminal or abuse record and it was determined that the record did not warrant prohibition of the person’s employment and the latest record checks do not indicate a crime was committed or founded abuse record was entered subsequent to that evaluation, the person may commence employment with the other licensee while the department of human

services' evaluation of the latest record checks is pending. Otherwise, the requirements of paragraph "a" remain applicable to the person's employment.

5. *a.* **This section** shall also apply to prospective employees of all of the following, if the provider is regulated by the state or receives any state or federal funding:

(1) An employee of a homemaker-home health aide, home care aide, adult day services, or other provider of in-home services if the employee provides direct services to consumers.

(2) An employee of a hospice, if the employee provides direct services to consumers.

(3) An employee who provides direct services to consumers under a federal home and community-based services waiver.

(4) An employee of an elder group home certified under **chapter 231B**, if the employee provides direct services to consumers.

(5) An employee of an assisted living program certified under **chapter 231C**, if the employee provides direct services to consumers.

*b.* In substantial conformance with the provisions of **this section**, prior to the employment of such an employee, the provider shall request the performance of the criminal and child and dependent adult abuse record checks. The provider shall inform the prospective employee and obtain the prospective employee's signed acknowledgment. The department of human services shall perform the evaluation of any criminal record or founded child or dependent adult abuse record and shall make the determination of whether a prospective employee of a provider shall not be employed by the provider.

6. *a.* The department of inspections and appeals, in conjunction with other departments and agencies of state government involved with criminal history and abuse registry information, shall establish a single contact repository for facilities and other providers to have electronic access to data to perform background checks for purposes of employment, as required of the facilities and other providers under **this section**.

*b.* The department may access the single contact repository for any of the following purposes:

(1) To verify data transferred from the department's nurse aide registry to the repository.

(2) To conduct record checks of applicants for employment with the department.

7. *a.* If a person employed by a facility, service, or program employer that is subject to **this section** is convicted of a crime or has a record of founded child or dependent adult abuse entered in the abuse registry after the person's employment application date, the person shall inform the employer of such information within forty-eight hours of the criminal conviction or entry of the record of founded child or dependent adult abuse. The employer shall act to verify the information within forty-eight hours of notification. If the information is verified, the requirements of **subsections 2, 3, and 4** regarding employability and evaluations shall be applied by the employer to determine whether or not the person's employment is continued. The employer may continue to employ the person pending the performance of an evaluation by the department of human services to determine whether prohibition of the person's employment is warranted. A person who is required by **this subsection** to inform the person's employer of a conviction or entry of an abuse record and fails to do so within the required period commits a serious misdemeanor.

*b.* If a facility, service, or program employer receives credible information, as determined by the employer, that a person employed by the employer has been convicted of a crime or a record of founded child or dependent adult abuse has been entered in the abuse registry after employment from a person other than the employee and the employee has not informed the employer of such information within the period required under paragraph "a", the employer shall act to verify the credible information within forty-eight hours of receipt of the credible information. If the information is verified, the requirements of **subsections 2, 3, and 4** regarding employability and evaluations shall be applied to determine whether or not the person's employment is continued.

*c.* The employer may notify the county attorney for the county where the employer is located of any violation or failure by an employee to notify the employer of a criminal conviction or entry of an abuse record within the period required under paragraph "a".

94 Acts, ch 1130, §12; 97 Acts, ch 42, §1; 98 Acts, ch 1141, §2; 98 Acts, ch 1223, §20, 21; 99 Acts, ch 96, §11; 99 Acts, ch 114, §5; 2001 Acts, ch 8, §1; 2001 Acts, ch 20, §2, 3; 2001 Acts, ch

64, §4; 2002 Acts, ch 1050, §18; 2003 Acts, ch 166, §2; 2006 Acts, ch 1069, §1; 2008 Acts, ch 1187, §112; 2009 Acts, ch 133, §36

Referred to in [§135B.34](#), [135C.36](#), [152.5](#), [231B.2](#), [231C.3](#), [231D.14](#), [235A.16](#), [235B.6](#), [237A.5](#)

Legislative intent; 98 Acts, ch 1217, §36